

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DIAMOND X RANCH, LLC

Plaintiff,

V.

ATLANTIC RICHFIELD COMPANY.

Defendant.

Case No.: 3:13-cv-00570-MMD-WGC

**JOINT PROPOSED FORM OF ORDER
RE: PLAINTIFF'S MOTION TO
DISQUALIFY SNELL & WILMER, LLP
AND DAVIS GRAHAM & STUBBS LLP
AS DEFENDANTS' COUNSEL**

**ROBERT A. McQUAID JR.
UNITED STATES MAGISTRATE JUDGE**

This matter is before me on Plaintiff's Motion to Disqualify Snell & Wilmer, L.L.P. and Davis Graham & Stubbs LLP as Defendant's Counsel (the "Motion to Disqualify") [#30], filed December 23, 2013. Defendant's counsel filed separate responses, the Response in Opposition to Plaintiff's Motion to Disqualify Davis Graham & Stubbs LLP as Defendant's Lead Counsel [#35], filed January 9, 2014, and Defendant's Opposition to Plaintiff's Motion to Disqualify Snell & Wilmer L.L.P. as Defendant's Counsel [#39], also filed January 9, 2014. Plaintiff, Diamond X Ranch, LLC filed separate replies supporting its Motion as to each of the Defendant's counsel [#40 & #41] on January 17, 2014. The Court held a hearing on the Motion to Disqualify on January 22, 2014.

BACKGROUND

Plaintiff, Diamond X Ranch, LLC (“Diamond X”) brought the Motion to Disqualify, asserting that Snell & Wilmer, L.L.P. (“S&W”) is representing Defendant Atlantic Richfield Company (“Atlantic Richfield”) in this lawsuit, while simultaneously representing Diamond X’s

1 two principals, Bruce and David Park (the “Parks”), in violation of Nev. R. Prof. Conduct 1.7(1)¹
 2 and must be disqualified. Diamond X also contends that during S&W’s concurrent
 3 representation of Diamond X’s principals and Atlantic Richfield, S&W has served as co-counsel
 4 with Atlantic Richfield’s other counsel in this case, Davis Graham & Stubbs LLP (“DGS”).
 5 Diamond X contends that under Rule 1.10, the S&W conflict of interest must be imputed to DGS
 6 and that to protect its confidential information and avoid violation of Rule 1.6, both S&W and
 7 DGS must be disqualified from representing Atlantic Richfield in this case in order to preserve
 8 Diamond X’s right to the fair administration of justice and to ensure that client confidential
 9 information is not misused.
 10

11 S&W responded contending that neither Diamond X nor Bruce Park as an individual, are
 12 its clients. Since Diamond X is not a client of S&W, Diamond X has no standing to bring the
 13 Motion to Disqualify. Additionally, S&W contends that the corporate family doctrine and the
 14 engagement letter signed by the Parks prevented S&W from representing any individuals or
 15 entities affiliated or related to firm clients without the firm’s specific knowledge and consent.
 16 Thus, S&W argues, it did not concurrently represent adverse parties. S&W also contends that it
 17 did not receive any information directly related to Diamond X. Additionally, S&W argued that
 18 the Parks’ engagement letter contained language that served to prospectively waive any such
 19 conflict.
 20

21 DGS responded that if S&W is not disqualified, DGS cannot be disqualified. DGS has no
 22 client relationship with Diamond X or any member of the Park family, and DGS has not received
 23 any privileged or confidential information regarding Diamond X or the Parks. Accordingly, DGS
 24 argued that even if S&W is disqualified, Diamond X has not shown a reasonable probability or
 25 possibility that S&W actually shared confidential information with DGS or that any prejudice to
 26

27
 28 ¹ References to “Rule ____” refer to the Nev. R. Prof. Conduct.

1 Diamond X caused by DGS remaining in this case outweighs the prejudice to Atlantic Richfield
2 from replacing its lead counsel.

3

4 **FINDINGS AND CONCLUSIONS**

5 Diamond X has standing to move for disqualification of Atlantic Richfield's counsel,
6 S&W, because Diamond X has a direct personal stake in S&W's concurrent representation of the
7 Parks and Atlantic Richfield.

8 Before S&W appeared in this case on behalf of Atlantic Richfield, S&W verbally
9 discussed representing Atlantic Richfield in this matter with David Park, to which he objected.
10 S&W subsequently sent a waiver letter to both David and Bruce Park to request that the Parks
11 waive any actual or potential conflict with respect to S&W's representation of Atlantic Richfield
12 in this matter. The Parks refused to sign the waiver letter. David Park also states in his
13 declaration that he consulted with an S&W attorney on legal matters relating to Diamond X three
14 to four years before this case was filed. It is, therefore, clear that S&W knew that Diamond X
15 was a limited liability company owned by David and Bruce Park, with each having a fifty percent
16 ownership interest, before S&W appeared in this case.

17 The Court concludes that S&W is representing two clients concurrently—the Parks and
18 Atlantic Richfield—with directly adverse interests and, therefore, it has a concurrent conflict of
19 interest—prohibited by Rule 1.7. The Court also concludes that this conflict has not been
20 waived. The Court finds that S&W did not obtain a valid prospective waiver from the Parks.
21 The Parks could not have provided informed consent when they engaged S&W because they did
22 not have knowledge of the concurrent conflict present in this case at that time. As a result, S&W
23 must be disqualified.

24 The Motion as to Snell & Wilmer is GRANTED.

25 The Court views the situation regarding DGS differently. There is no evidence of a

1 conflict with respect to DGS. The only issue is whether the conflict that requires the Court to
 2 disqualify S&W should be imputed to DGS. The Court finds no basis for such imputation. All
 3 three DGS counsel of record stated in personal declarations that they had not obtained any
 4 confidences of Diamond X or the Parks. There is nothing in the record to refute the DGS
 5 Declarations.

6 The parties dispute the applicable standard for conflict imputation to co-counsel.
 7 Whether the applicable standard is a reasonable possibility or a reasonable probability that
 8 confidential client information was shared, the Court finds that there is not a reasonable
 9 possibility or probability that DGS received privileged or confidential information about
 10 Diamond X. Any prior joint legal representation of Atlantic Richfield by DGS and S&W on
 11 other matters not involving the Parks or Diamond X is not relevant to the Motion to Disqualify.
 12

13 Further, the Court finds that there is no appearance of impropriety in DGS representing
 14 Atlantic Richfield in this case. The denial of the Motion to Disqualify as to DGS will not result
 15 in prejudice to Diamond X. Conversely, there would be prejudice to Atlantic Richfield if the
 16 Motion to Disqualify were granted as to DGS.
 17

18 The Motion as to Davis Graham & Stubbs LLP is DENIED.

19 **THEREFORE, IT IS ORDERED** as follows:

20 1. That Plaintiff's Motion to Disqualify Snell & Wilmer, L.L.P. and Davis Graham
 21 & Stubbs LLP as Defendant's Counsel [#30], filed December 23, 2013, is **GRANTED** in part
 22 and **DENIED** in part.
 23

24 2. That Plaintiff's Motion as to Snell & Wilmer L.L.P. is **GRANTED**.
 25

26 3. That Plaintiff's Motion as to Davis Graham & Stubbs LLP is **DENIED**.
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28 4. DGS shall advise Atlantic Richfield that it must retain new local counsel.
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5. The Court will allow 20 days from the date this Order is entered to have new local
 30 counsel enter appearances in this case.

6. DGS is authorized to file its Reply in support of its Motion for partial dismissal as scheduled, on January 24, 2014.

DATED: January, 2014.
In Reno, Nevada

By The Court:

ROBERT A. McQUAID JR.
United States Magistrate Judge